

HOUSE BILL 1682
By Scroggs

AN ACT to enact the "Heavy Equipment Dealer Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act may be known and shall be cited as the "Heavy Equipment Dealer Act".

SECTION 2. As used in this act unless the context requires otherwise:

(1) "Agreement" means a commercial relationship, not required to be evidenced in writing, of definite or indefinite duration, between a supplier and a dealer pursuant to which the dealer has been authorized to distribute one (1) or more of the supplier's heavy equipment products, and attachments and repair parts therefor, and in connection therewith to use a trade name, trademark, service mark, logo type, or advertising or other commercial symbol;

(2) "Dealer" means a person who:

(A) Is engaged in the business of selling or leasing heavy equipment at retail;

(B) Customarily maintains a total inventory, valued at over two hundred fifty thousand dollars (\$250,000) of new heavy equipment and attachments and repair parts; and

(C) Provides repair services for such heavy equipment sold;

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(3)(A) "Heavy equipment" means self-propelled, self-powered or pull-type equipment and machinery, including engines, weighing five thousand (5,000) pounds or more, primarily employed for construction, industrial, maritime, mining and forestry uses;

(B) "Heavy equipment" shall not include:

(i) Motor vehicles requiring registration and certificates of title in accordance with title 55, chapter 4;

(ii) Farm machinery, equipment and implements sold or leased pursuant to dealer agreements with suppliers; or

(iii) Consumer goods;

(4) "Person" means a natural person, corporation, partnership, trust, agency or other entity as well as the individual officers, directors or other persons in active control of the activities of each such entity. "Person" also includes heirs, assigns, personal representatives and guardians; and

(5) "Supplier" means every person, including any agent of such person, or any authorized broker acting on behalf of that person, that enters into an agreement with a dealer.

SECTION 3. (a) Notwithstanding the terms, provisions or conditions of any agreement, no supplier shall unilaterally amend, cancel, terminate or refuse to continue to renew any agreement, or unilaterally cause a dealer to resign from an agreement, unless the supplier has first complied with the provisions of Section 3 of this act, and good cause exists for the amendment, termination, cancellation, nonrenewable, noncontinuance or causing a resignation. Good cause shall not include the sale or purchase of a supplier. Good cause shall be limited to withdrawal by the supplier, its successors and assigns, of the sale of its products in Tennessee, or dealer performance deficiencies including, but not limited to the following:

(1) Bankruptcy or receivership of the dealer;

(2) Assignment for the benefit of creditors or similar disposition of the assets of the dealer, other than the creation of a security interest in the assets of a dealer for the purpose of securing financing in the ordinary course of business; or

(3) Failure by the dealer to substantially comply, without reasonable cause or justification, with any reasonable and material requirement imposed upon him in writing by the supplier including, but not limited to a substantial failure by a dealer to:

(i) Maintain a sales volume or trend of his supplier's product line or lines comparable to that of other similarly situated dealers of that product line, or

(ii) Render services comparable in quality, quantity or volume to the services rendered by other dealers of the same product or product line similarly situated.

In any determination as to whether a dealer has failed to substantially comply, without reasonable excuse or justification, with any reasonable and material requirement imposed upon such dealer by the supplier, consideration shall be given to the relative size, population, geographical location, number of retail outlets and demand for the products applicable to the market area of the dealer in question and to comparable market area.

(b) No supplier shall be required to give notice or show good cause pursuant to subsection (a) to unilaterally amend agreements with dealers to comply with federal or state law or to uniformly amend agreements as to all dealers of such supplier in all states in which the supplier is marketing its products.

(c) In any dispute as to whether a supplier has acted with good cause as required by this section the supplier shall have the burden of proof to establish that good cause existed.

SECTION 4. (a) Except as provided in subsection (d), a supplier shall provide a dealer at least one hundred twenty (120) days' prior written notice of any intention to amend, terminate, cancel or not renew any agreement. The notice shall state all the reasons for the intended amendment, termination, cancellation or nonrenewal.

(b) Where such reason or reasons relate to a condition or conditions which may be rectified by action of the dealer, the dealer shall have seventy-five (75) days in which to take such action and, within such seventy-five (75) day period, shall give written notice to the supplier when such action is taken. If such condition or conditions have been rectified by action of the dealer, the proposed amendment, termination, cancellation or nonrenewable shall be void and without legal effect. However, where the supplier contends that action on the part of the dealer has not rectified one (1) or more of such conditions, such supplier must give written notice thereof to the dealer within fifteen (15) days after the dealer gave notice to the supplier of the action taken.

(c) During the one hundred twenty (120) day notice period provided in subsection (a), the dealer shall have the right to contract for a transfer of such dealer's business to another person who meets the material and reasonable qualifications and standards required by the supplier of its dealers. The dealer shall give notice of any such transfer to the supplier at least forty-five (45) days before the expiration of the one hundred twenty (120) day notice period.

(d) No notice shall be required and an agreement may be immediately terminated, amended, canceled or allowed to expire if the reason for the amendment, termination, cancellation or nonrenewable is:

(1) The bankruptcy or receivership of the dealer;

(2) An assignment for the benefit of the creditors or similar disposition of the assets of the business, other than the creation of a security interest in the assets of a dealer for the purpose of securing financing in the ordinary course of business;

(3) Willful or intentional misrepresentation made by the dealer with the express intent to defraud the supplier;

(4) Failure of the dealer to conduct its customary sales and service operations during its customary business hours for seven (7) consecutive business days, unless such failure has resulted from acts of God, casualties, strikes, or other similar circumstances beyond the dealer's reasonable control;

(5) Failure to pay any undisputed amount due the supplier continuing for thirty (30) days after written notice thereof; or

(6) A dealer's final conviction of a felony.

SECTION 5. (a) No supplier shall unreasonably withhold or delay consent to any transfer of the dealer's business or transfer of the stock or other interest in the dealership whenever the dealer to be substituted meets the material and reasonable qualifications and standards required of its dealers. Should a supplier determine that a proposed transferee does not meet its qualifications and standards, it shall give the dealer written notice thereof, stating the specific reasons for withholding consent. No prospective transferee shall be disqualified to be a dealer because it is a publicly held corporation. A supplier shall have forty-five (45) days to consider a dealer's request to make a transfer under this subsection.

(b) Notwithstanding the provisions of subsection (a), no supplier shall withhold consent to or in any manner retain a right of prior approval of the transfer of the dealer's business to a member or members of the family of the dealer or the principal owner of the dealer. As used in this subsection, "family" means the spouse, parent, siblings,

children, stepchildren, and lineal descendants, including those by adoption, of the dealer or principal owner of the dealer.

(c) Whenever a transfer of a dealer's business occurs, the transferee shall assume all the obligations imposed on and succeed to all the rights held by the selling dealer by virtue of any agreement, consistent with this act, between the selling dealer and one (1) or more suppliers entered into prior to the transfer.

(d) In any dispute as to whether a supplier has denied consent in violation of this section, the supplier shall have the burden of proving a substantial and reasonable justification for the denial of consent.

SECTION 6. Notices required by this act shall be sent by certified or registered mail.

SECTION 7. (a) Jurisdiction to hear and determine cases and controversies arising under provisions of this act shall be in the chancery court of the county where the dealer has its principal place of business in Tennessee. The court may grant equitable relief necessary to remedy the effects of conduct which it finds to exist and which is prohibited under this act, including, but not limited to, declaratory judgment and injunctive relief.

(b) In addition to any other remedies available at law or in equity, if a supplier has attempted or accomplished an annulment, cancellation, termination or refused to continue or renew an agreement without good cause or withheld or delayed consent in violation of Sections 3 or 5 of this act, then the dealer shall be entitled to recover losses and damages, both general and special, proximately resulting therefrom, together with the cost of the action and reasonable legal fees. Such damages shall include compensation for the value of the agreement and the good will of the dealer's business, if any, arising therefrom.

(c) Nothing in this act shall bar the right of an agreement to provide for binding arbitration of disputes.

(d) No supplier may cancel, terminate or refuse to continue to renew an agreement during the one hundred twenty (120) day period in Section 4 of this act or during the pendency of litigation or arbitration except as provided in subsection (d) of Section 4 of this act.

SECTION 8. No supplier shall require or prohibit any change in management or personnel of any dealer unless the current or potential management or personnel fails to meet reasonable qualifications and standards required by the supplier for its dealers.

SECTION 9. The provisions of this act shall be deemed to be incorporated in every agreement subject hereto and shall supersede and control all other provisions of the agreement inconsistent with this act. No supplier shall require any dealer to waive compliance with any provision of this act. Any contract or agreement purporting to do so is void and unenforceable to the extent of the waiver or variance. Nothing in this act shall be construed to limit or prohibit good faith settlements of disputes voluntarily entered into between the parties.

SECTION 10. (a) Every agreement entered into under this act shall impose on the parties an obligation to act in good faith.

(b) This act shall impose on every term and provision of any agreement a requirement of reasonableness. Every term or provision of any agreement shall be interpreted so that the requirements or obligations imposed therein are reasonable.

SECTION 11. This act shall take effect July 1, 1997, the public welfare requiring it.

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